

approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, or marital or familial status. To ensure compliance with these objectives, the RHS approval official will complete Form RD 2006-38, "Civil Rights Impact Analysis Certification."

[56 FR 65981, Dec. 20, 1991, as amended at 58 FR 38924, July 21, 1993; 58 FR 40953, July 30, 1993; 58 FR 44265, Aug. 20, 1993; 59 FR 6887, 6897, Feb. 14, 1994; 59 FR 49346, Sept. 28, 1994; 61 FR 39851, July 31, 1996; 62 FR 25067, 25075, May 7, 1997]

§§ 1944.216–1944.220 [Reserved]

§ 1944.221 Security.

(a) *Mortgage.* Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage will be taken on the property purchased or improved with the loan, except as indicated in paragraphs (a)(1) and (a)(3) of this section and, for projects that are funded jointly by RHS and other sources, as indicated in §1944.233(f).

(1) A second mortgage will be taken on a site developed with prior loan(s) when a subsequent loan is made to complete or finish out units on the site or when a second initial loan is made to develop units on a contiguous site.

(2) Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships, the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the promissory note and mortgage.

(3) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(b) *Financing statement.* To secure the FmHA or its successor agency under Public Law 103-354 loan, each borrower will execute Form FmHA or its suc-

cessor agency under Public Law 103-354 440-25, "Financing Statement," and a security agreement at loan closing pledging all revenue from the housing project. This includes any FmHA or its successor agency under Public Law 103-354 RA payments State or private RA payments and/or rent or occupancy payments.

(c) If a bond is used in lieu of a promissory note to evidence a loan, it must be sent to the National Office for review prior to loan closing. OGC must also review the proposed bond.

[53 FR 2159, Jan. 26, 1988, as amended at 56 FR 2238, Jan. 22, 1991; 62 FR 25075, May 7, 1997]

§ 1944.222 Technical, legal, and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised without regard to such factors as race, color, religion, sex, handicap, marital or familial status, or National origin, and it is unlawful to use an appraisal where the person knows, or reasonably should know, that the appraiser improperly took into consideration the factors indicated above. Appraisals for FmHA or its successor agency under Public Law 103-354 will be done by the multiple housing appraiser or a designated contract appraiser authorized to make real estate appraisals. If security involves less than five rental units, the property will be appraised under subpart C of part 1922 of this chapter. For security involving five or more rental units, the appraisal will be made under FmHA Instruction 1922-B (available in any State or servicing office). Form FmHA or its successor agency under Public Law 103-354 1922-7, "Appraisal Report for Multi-Unit Housing," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Architectural and engineering services.* (1) Housing and related facilities will be planned and developed in accordance with subparts A and C of part 1924 of this chapter. The housing will be designed to meet the needs of the types of persons who will likely occupy it.

(2) A written contract for architectural services will be required as outlined in subpart A of part 1924 of this chapter.

(c) *Construction and development policies.* Construction and development will be performed in accordance with subpart A of part 1924 of this chapter (FmHA Instruction 1924-A), available in any FmHA or its successor agency under Public Law 103-354 office.

(d) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction and operation of housing financed with an RRH or RCH loan will conform with applicable laws, ordinances, codes and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy).

(e) *Contracts for legal services.* On projects requiring extensive legal services, the applicant must have a written contract if loan funds will be used for these services. All contracts will be subject to review and concurrence by FmHA or its successor agency under Public Law 103-354 and should be submitted to FmHA or its successor agency under Public Law 103-354 before execution by the applicant. Contracts will provide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(f) *How to apply for a rural rental or rural cooperative housing loan.* Exhibit A may be used as a guide for applicants applying for loans. Extra copies may be obtained from FmHA or its successor agency under Public Law 103-354.

(g) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant must obtain an option on the parcel to be purchased from the current owner of public record. Form FmHA or its successor agency under Public Law 103-354 440-34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA or its successor agency under Public Law 103-354 and the applicant may be used. When an option form other than Form FmHA or its successor agency under Public Law 103-354 440-34 is used, a provision should be in-

cluded indicating that it is contingent upon FmHA or its successor agency under Public Law 103-354 making a loan to the buyer.

(h) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of subpart A of part 1944 and 7 CFR part 3550 of this chapter regarding title clearance and legal services will apply.

(i) *Use of and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of subpart A to part 1902 and subpart C to part 1930. Collateral for deposit of funds will be pledged in accordance with §1902.7 of subpart A of part 1902 of this chapter. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds cannot be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for eligible loan purposes.

(j) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with subpart A of part 1806 of this chapter (FmHA Instruction 426.1) and subpart C of part 1930 of this chapter.

(2) Suitable worker's compensation insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged or required, when appropriate, to obtain liability insurance.

(4) Flood insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with subpart B of part 1806 (FmHA Instruction 426.2).

(k) *Surety bonding and fidelity coverage.* (1) The provisions of subpart A of part 1924 of this chapter pertaining to

surety bonds are applicable to RRH and RCH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds is the interim lender's. If the interim lender decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will see that fidelity coverage is in place on any personnel entrusted with the receipt, custody and disbursement of any project monies, securities, or readily salable property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of exhibit B of subpart C of part 1930 of this chapter.

(l) *Previous participation certification.* All principals and affiliates are required to submit a properly completed Form HUD-2530/FmHA 1944-37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The forms will be completed and processed in accordance with instructions attached to the form.

[53 FR 2159, Jan. 26, 1990, as amended at 55 FR 6245, Feb. 22, 1990; 55 FR 26644, June 29, 1990; 55 FR 35895, Sept. 4, 1990; 56 FR 2238, Jan. 22, 1991; 58 FR 40953, July 30, 1993; 58 FR 44265, Aug. 20, 1993; 59 FR 6890 and 6896-6897, Feb. 14, 1994; 67 FR 67328, Dec. 24, 2002]

§ 1944.223 Supplemental requirements for manufactured home project development.

This section includes additional provisions that apply to the making of loans for manufactured home rental and cooperative project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to projects and housing for rent to eligible tenants will also mean the rental of sites with manufactured homes within a rental project development.

(a) *Eligible projects.* When a loan is closed on a manufactured home project, the borrower will have constructed and completed, pursuant to a

commitment given in accordance with § 1944.235(c)(2) of this subpart, such project designed principally for rental or cooperative use for manufactured homes, and conforming to the development, installation and set-up requirements of exhibit J to subpart A of part 1924 of this chapter.

(1) The borrower must be the first owner purchasing the manufactured homes for purposes other than resale.

(2) The project must include two or more contiguous sites with dwelling units. Each manufactured home unit must not have been previously occupied as a residence or for any other purpose and be less than 1 year old from date of manufacture.

(3) A project is not eligible if the purpose of the loan is to refinance the project, except as provided in § 1944.212(l) of this subpart.

(4) A loan may be made to rehabilitate manufactured home units of an existing project only if the units to be rehabilitated are currently financed by FmHA or its successor agency under Public Law 103-354 under this subpart.

(5) An eligible project may include the purchase of the real property of an existing project which will be redeveloped with the placement of new, previously unoccupied, manufactured homes conforming to the development, installation and set-up requirements of exhibit J to subpart A of part 1924 of this chapter.

(b) *Loan limitations.* The maximum loan amount will be determined in accordance with § 1944.213 of this subpart as applicable.

(c) *Rates and terms.* The amortization period of each loan will not exceed the economic life of the security, taking into account probable depreciation. However, under no circumstance will the amortization period for a loan made under this section exceed 30 years from the date of the promissory note.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the project (including the manufactured homes) as